

UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

**Plaintiff/Appellee,**

-VS-

ROBERT RAE,

## Defendant/Appellant.

NO. CR-06-0003-WFN

## ORDER DENYING MOTION TO RECONSIDER

The Court received a letter from Defendant Robert Rae dated March 7, 2006. The Court will construe the letter as a Motion for Reconsideration of this Court's Order Dismissing Appeal with Prejudice, filed March 2, 2006 (Ct. Rec. 17).<sup>1</sup>

The Court has reviewed the file, the letter construed as a Motion for Reconsideration, and is fully informed. For the reasons stated below the Motion is denied.

## BACKGROUND

Defendant was convicted for speeding 16-20 mph over the posted speed limit in violation of 36 C.F.R. 4.21(c) and R.C.W. 46.61.400.16 at a bench trial before Magistrate Judge Cynthia Imbrogno on October 25, 2005 (Ct. Rec. 3). On the same day Judge Imbrogno imposed a fine of \$40.00, \$20.00 collection fee, and \$10.00 Special Assessment. On

<sup>1</sup>Ex parte communication by letter to the Court is not appropriate. Issues may be raised with the Court by motion. Thus, the Court will liberally construe the letter filed by the pro se Defendant as a motion so that the Court may properly address it.

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1 November 9, 2005, Defendant filed a "Notice and Demand to Vacate Void Judgment, and for  
 2 Injunctive Relief from Criminal Fraud" (Ct. Rec 4). The Court originally denied the Motion  
 3 (Ct. Rec. 5) but when the Motion was re-filed (Ct. Rec. 6) the Court liberally construed the  
 4 filing as a Notice of Appeal and entered Judgment *nunc pro tunc* to October 25, 2005 (Ct.  
 5 Rec. 8).<sup>2</sup> This allowed the Defendant to challenge his conviction in an appeal to this Court  
 6 pursuant to Federal Rule of Criminal Procedure 58(g)(2).

7       This Court entered a briefing Order on the appeal (Ct. Rec. 12). Defendant returned  
 8 this Court's Order of January 30, 2006, stamped on each page with the words "Refused  
 9 for Cause Without Dishonor And Without Recourse to Me" (Ct. Rec. 14). It appeared to  
 10 the Court that the Appeal was not consistent with Defendant's wishes because he had  
 11 returned the Order, because he had not paid the appeal filing fee and because he had  
 12 filed a Grievance against the Government attorney in which he stated that there was no  
 13 way his Notice and Demand to Vacate a Void Judgment should have been construed to  
 14 be an appeal.

15       This Court issued an Order to Show Cause why the appeal should not be dismissed  
 16 with prejudice (Ct. Rec. 15). Defendant filed an answer which unequivocally represented that  
 17 he had not filed an appeal and advised that he had filed a Complaint of Judicial Misconduct  
 18 against Judge Imbrogno as she had fraudulently construed a void judgment as an appeal. This  
 19 Court concluded that Defendant did not wish to pursue the appeal and it was dismissed with  
 20 prejudice on March 2, 2006 (Ct. Rec. 17). Five days later the Defendant wrote a letter to the  
 21 Court which does not dispute the dismissal of the appeal but which states that Defendant did  
 22 intend to proceed with his Notice and Demand to Vacate a Void Judgment." He further asked  
 23 what it meant to close a file, and whether his driving record has been expunged and all  
 24 collection efforts ceased.

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26       <sup>2</sup> The Judgment was filed 1/23/06, Ct. Rec. 10.

1 DISCUSSION

2 The Court will address the Defendant's questions in turn:

3       1. Defendant asks what "close the file" means. When a file is closed it means the  
4 proceedings have been completed. This Court closed the file because it was apparent from  
5 Defendant's filings that he did not wish to proceed with an appeal.

6       2. Defendant asks if the driving record was expunged and all collection efforts ceased.  
7 The short answer is no. Defendant's conviction and sentence stand because they have not  
8 been overturned on appeal. Defendant has the obligation to fulfill the responsibilities placed  
9 upon him by the Judgment.

10       Defendant indicates he wants to proceed with his Notice and Demand to vacate a  
11 Void Judgment. While the Federal Rules of Criminal Procedure provide for appeals of  
12 convictions pursuant to Rule 58(g) there is no provision to challenge a judgment using  
13 the procedure Defendant has selected to the exclusion of the appeals process. The  
14 Magistrate Judge gave this pro se Defendant every possible opportunity to challenge  
15 his conviction by construing his Notice as an Appeal. This Court gave him the  
16 opportunity to continue with the appeal by showing cause why it should not be  
17 dismissed, even when Defendant's actions were literally and patently not consistent with  
18 an intent to pursue the appeal. Although the Court is required to construe pro se  
19 litigant's filings liberally, the Court can only do so much to save Defendant's from  
20 making decisions that may not be in the Defendant's best interest. The Court will not  
21 reconsider the dismissal of the appeal with prejudice. Accordingly,

22       **IT IS ORDERED** that:

23       1. The March 7, 2006 letter from Defendant shall be **FILED** as a Motion for  
24 Reconsideration.

25       2. The March 7, 2006 letter from Defendant, construed as a Motion for  
26 Reconsideration, is **DENIED**.

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1       3. Defendant is further advised that if he wishes to appeal this ruling he must file with  
2 the District Court Executive, a Notice of Appeal to the Ninth Circuit Court of Appeals  
3 **WITHIN TEN DAYS** of the date of this Order. This Court makes no representation that  
4 the appeal will be permitted by the Ninth Circuit, given the fact that Defendant did not perfect  
5 his appeal before this Court.

6       The District Court Executive is directed to file this Order and provide copies of the  
7 letter and Order to counsel and to the pro se Defendant.

8       **DATED** this 14th day of March, 2006.

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11 03-14

s/ Wm. Fremming Nielsen  
WM. FREMMING NIELSEN  
SENIOR UNITED STATES DISTRICT JUDGE